(1)

95-1613

Supreme Court, U.S.
FILED
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CLERK

No.

In The

Supreme Court of the United States

LUTHER C. PERKINS
Petitioner

vs.

JESSE BROWN, SECRETARY,
U.S. DEPARTMENT OF VETERANS AFFAIRS
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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64 pp

QUESTIONS PRESENTED FOR REVIEW

1. The Central question presented before this Court is should the "sins of the lawyer be visited upon the Client "so that the Client is denied his right to a trial by Jury of his Peers according to the Bill of Rights? Amendment VII

2. Is an archaic precedent (the client is responsible for the actions and omissions of an attorney) more important than the client having to accept a cruel and unusual punishment (case being thrown out of court) for an Attorney's Dastardly act in strict violation of the Bill of Rights? Amendment VIII.

3. Why doesn't the Court make a ruling, "When an Attorney's Gross Negligence or Incompetence deprives the Client of the right to a trial by his peers, the Statute of Limitations is automatically waived?

4. How is Justice served in an AGE DISCRIMINATION CASE by a separate Civil Action against the Plaintiff's Counsel for mal-practice?

5. What is the criteria by which a Justice of a Civil Court determines whether a case is "frivolous" without any facts or documents being presented?

6. What is the criteria that determines that a Client must accept the low standards and morals of the Plaintiff's Counsel as his own?

7. How does a Civil Court Justice determine the PARAMETERS of the "more narrow view of the doctrine recently articulated by the Supreme Court?"

8. Is COMMON SENSE (Good Judgment) no longer a factor in rulings and decisions by the Courts?

9. How is a citizen of the UNITED STATES to enter the "argumentative system" when barred from the Halls of Justice by actions and omissions of Counsel and condoned by the Court.

10. Is lying, stealing, and falsifying documents by an Attorney accepted procedure by the Courts at the Expense of Justice?

11. Which is correct the Right to a Trial by Jury shall be preserved (Amendment VII) or Denying him his day in Court According to the U.S. Attorney and affirmed by the U.S. Court of Appeals for the First Circuit and condoned by the U.S. District Court of New Hampshire?

12. Why is there not a rule by the Judiciary that NO Case shall be thrown out of court without due notice to the client?

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the title of the case

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TABLE OF AUTHORITIES

A. COMMON SENSE

Definition according to Funk and Wagnalls Standard Desk Dictionary.
practical understanding; sound judgment"

B. CONSTITUTION OF THE UNITED STATES
(AMENDMENT VII and AMENDMENT VIII)

C. STATUTES
Age Discrimination in Employment act, as amended, 29 U.S.C. 626.D. CASES

Carter v City of Memphis, Tennessee cite as 636 F.2d 159 (1980) Docket No. 79-1056

Damian v Rhode Island Hosp. cite as 636 F. 2d 159 (1983)

Edsall v Penn Central Transp. Co. 479 F2d 385 *SIXTH CIRCUIT* (1973) (Per curium 586 F 2d 385

Edwards Const. Co. v Anderson Safeway, etc. cite as 542 F. 2d 1318 (1976) SEVENTH *CIRCUIT.*

Hasenflu v Pyke FIFTH CIRCUIT 1974 491 F. 2d 1094

Link v Wabash R. Co. , U.S. 626 p 1392,1395, 1396, 1397, 1398 , and 1399

Silas v Sears , *Roebuck & Co., Inc.No 78-2019 cite as* 586 F.2d 382, 385 *FIFTH CIRCUIT (1978)*

Volk v Multi media, inc. cite as 516 F.. Supp 157 (1981) U.S. District Court S.D. Ohio No. C-1-79-1386

E. RULES

Federal service rule of Civil procedure (4) provides that the Court may extend the time for filing providing the Plaintiff shows good cause for the delay.

OPINIONS BELOW

Decision by the United States Court of Appeals for the First Circuit. No. 95-1645 (Appendix A).
December 5, 1995

An order by the United States Court for the District of N .H Civil No. 94-347 JD (Appendix B)
May 25, 1995

JURISDICTION

UNITED STATES CONSTITUTION, BILL OF RIGHTS (AMENDMENT VII)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by a jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

UNITED STATES CONSTITUTION, BILL OF RIGHTS (AMENDMENT VIII)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

SUPREME COURT RULE #10

(a) The United States Court of Appeals for the FIRST CIRCUIT has entered a decision in conflict with the decision of another United States Court on the SAME matter. (United States Courts of appeal for the FIFTH, SIXTH AND SEVENTH CIRCUITS).

(b) A United States Court of Appeals has decided an important question of Federal Law that has not been , but should be (clearly delineated) settled by this court.

STATUTORY PROVISIONS INVOLVED

The Age Discrimination in Employment Act of l967, as amended 29 U.S.C. 626 (e) provides: Section 259 of this title shall apply to actions under this chapter. If a charge filed with the commission under this act is dismissed or the proceeding of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A Civil action may be brought under this section by a person defined in section 630 (a) against the respondent named in the charge within 90 days after the date of the receipt of such notice. Amendment #2 consists of "Prior to its amendment in l991, 626 (e)(l) provided that the two and three year statute of Limitations codified at 29 U.S.C. applied to ADEA actions.

STATEMENT OF THE CASE

This case started as an age discrimination case, but has evolved into whether or not the Statute of Limitations should be waived (tolled) due to Counsels GROSS NEGLIGENCE (Stealing, Lying, Falsifying of an Invoice) to mislead the client into believing a complaint had been filed in a timely manner as requested by the client. (Appendices (C,D, and E)

The Equal Employment Opportunity Commission decision received by the Petitioner, included the assertion that the Petitioner, had the right to file a Civil Action in the appropriate United States District Court. Said assertion was ambiguous as to whether the Petition had ninety(90) days or thirty (30) days to file the action in the Appropriate United States District Court, however, the Petitioner specifically requested Counsel to file within the thirty (30) days to make sure the complaint was filed in a timely manner. Counsel did NOT DO THIS. When the Petitioner sought Status of the Complaint, the Petitioner was informed by the Clerk in the U.S. District Court that no complaint had been filed.

The Petitioner received the final decision from EEOC on September 23, 1993, composed the complaint and demand for Jury Trial on September 24, 1993 with the aid of Counsel and Assurance from Counsel the complaint would be filed in the U.S. District Court in a timely manner. (Appendix C).

As per invoice document from Marshall Law Inc., of East Kingston, N.H. with fraudulent information.:

10-7-93 Initial Conference with Client
10-14-93 Draft Complaint
10-19-93 Fax Use Charge
10-22-93 Postage

This led Petitioner to believe the complaint had been filed in a timely manner. After numerous tries to contact the lawyer (falsely believing it was being handled in a competent manner) waited until returning from Florida before following up the issue.

Petitioner then filed the complaint with the assistance of Ex-counsel's Law Partner, (Appendix D), then received Motion for dismissal from defendant due to Statute of Limitations. Petitioner than filed a counter motion. Motion of Petitioner denied.

Received the decision of the U.S. District Court of the State of N.H. Civil No. F-l-94-357-JD "the court finds that , the failure to file resulted solely from the GROSS ERROR of the PLAINTIFF'S ATTORNEY and his LAW FIRM. "however, even MISCONDUCT of the MAGNITUDE alleged in this case does not warrant equitable tolling under the more "NARROW VIEW " of the doctrine recently articulated by the SUPREME COURT and other courts sitting in this and other circuits." (Appendix B)

The Petitioner firmly believes that the question needs to be answered, what MAGNITUDE is great enough to warrant tolling? What are the PARAMETERS of the NARROW VIEW?

Also how does the District Court determine that a MALPRACTICE suit would resolve the issue in an age discrimination suit? This would only be of help to the Lawyers (financially) involved and in NO way resolve the discrimination issue.

On December 8, 1995 received the decision by the U.S. Court for the First Circuit (Appendix A) , which affirmed the decision by the District Court. "under our system of representative litigation, clients are ORDINARILY held responsible for the acts and omissions of their attorneys." ("[W]hile [t]he argument the sins of the attorney should not be visited upon the client is a seductive one, ...its siren call is overborne by the nature of the adversary system." Although we are not unsympathetic with appellant's plight, we agree that he is left to his remedies against counsel.

At this time the petitioner would ask the question what is ORDINARY? Petitioner must be held responsible for the

ORDINARY actions of an attorney who lied, stole ($125) in escrow for filing fee for his own use and misled the client. If the lawyer had stolen this money at the point of a gun, would the Petitioner still be responsible for the actions of his attorney?

Would the U.S. Attorney , the U.S. District Court and the U.S. Court of Appeals for the first Circuit still be defending this attorney who has had his license suspended to Practice Law in the State of N.H. These same attorneys who are prosecuting daily citizens who lie, steal and defraud? .

The statement " While the argument that the sins of the Attorney should not be visited upon the client is a seductive one, its siren call is overborne by the nature of the adversary system". This is the same argument the FIRST CIRCUIT has used previously (*Damiani v Rhode Island Hosp)* cite as 704 f.2d 12 (1983) and has fancy words but a very unclear message.

The Petitioner's interpretations as a layman: "Reveille, wake up and see the light, this court agrees with you but we must protect the lawyer and reduce congestion in the courts, even at the expense of Justice.

How does a citizen of the United States enter the adversary system of the courts if denied admission by the DASTARDLY ACTS of his ATTORNEY and condoned by the courts?

"Remedies against Counsel" does not put the "facts and "documentation " of a DISCRIMINATION CASE before a Jury of his peers according to the BILL OR RIGHTS (Amendment VII).

REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the FIRST CIRCUIT is in COMPLETE DISAGREEMENT with decisions of the FIFTH (5th) CIRCUIT, SIXTH (6th) CIRCUIT and the SEVENTH (7TH) CIRCUIT plus *Volk v. Multi-media, inc.* cite as 516 F. 2d 157 (1981) United States District Court, S.D. Ohio, W.D. (3) and the opinion of MR. JUSTICE BLACK WITH MR. JUSTICE DOUGLAS AND MR. CHIEF JUSTICE WARREN CONCURRING, Link v. Wabash r. Co., U.S. 626 P 1392,1397,1398, and 1399

Decision by the United States Court of Appeals, ***FIFTH CIRCUIT*** *Silas v. Sears Roebuck & Company, Inc. No. 78-2019* cite as 586 F.2d (1978). Furthermore, the record reveals no complicity on the part of the plaintiff in the INACTION OF HIS ATTORNEY which occasioned the dismissal. p.385[7]l. "Dismissal is generally inappropriate and lesser sanctions are favored where neglect is plainly attributable to an ATTORNEY rather than to his BLAMELESS CLIENT. Se, eq,: *Hassenflu v. Pyle,* 5TH CIR., 1974, 491 F 2 d 1094."in the circumstances of this case, we find that the trial court abused its discretion in denying appellant's 6 (b) motion. Immediate imposition of the sanction of dismissal was much too severe a response to the failure of Silas's attorney to appear at the pretrial conference.

WE REMAND THE CASE TO THE DISTRICT COURT WITH INSTRUCTIONS TO REINSTATE SILAS'S ACTION ON THE DOCKET

REVERSED AND REMANDED

Decision by the United States Court of Appeals, ***SIXTH CIRCUIT*** *Carter v. City of Memphis, Tennessee* cite as 636 F.2d 159 (1980) Docket No. 79-1056

"The Court of Appeals held that: (l) dismissal for Counsel's failure to comply with pretrial orders is a HARSH sanction which should only be had in extreme situations.

"DISMISSAL WAS ABUSE OF DISCRETION." p.159 "The dismissal of an action for attorney's failure to comply is a HARSH sanction which the court should order only in extreme situations showing "a clear record of delay or contumacious conduct by the plaintiff." *Silas v Sears. Roebuck & Co Inc 586*F 2d 382,385 ***(5TH CIR 1978)*** See *Edsall v. Penn Central Transp. Co* F2d 33 ***(5th CIR 1978)*** (per curiam) . Absent this showing, an order of dismissal is an ABUSE OF DISCRETION: The court is limited to lesser sanctions designed to achieve compliance. 586 F.2d 385 "Not with standing plaintiff's attorney's conduct, in our view the district court abused its discretion in dismissing the complaint. **THE PLAINTIFF IS BLAMELESS!** .

REVERSED AND REMANDED

Decision by the United States Court of Appeals, ***SEVENTH CIRCUIT*** *Edwards Const. Co. v. Anderson Safeway, etc.* cite as 542 F 2d 1318 (1976)."the key is a failure to prosecute, whether styled as a failure to appear at a pre-trial conference , failure to prepare for conference, or failure to prepare for conference, or failure to comply with the pre-trial order." ID 1323.**DISMISSAL IS USUALLY INAPPROPRIATE WHERE THE NEGLECT IS SOLELY THE FAULT OF THE ATTORNEY."**

REVERSED AND REMANDED

Decision by the U.S. District Court, S.D. Ohio, W.D. 516 Feb. 19, 1991 p.157 160 Vol v. Multi-Media, Inc. "Where" failure to

file was due to attorney error, scales TIPPED in favor of equitable tolling. " p. 158. "The effect of this holding is that failure to comply with the notice provision does not necessarily deprive a District Court of the power to entertain a claim under the ADEA. The 180 day period is subject to modification, that is tolling for equitable reasons." in relaxing its view of the notice provision of the ADEA, The ***SIXTH CIRCUIT*** put itself in step with ***OTHER CIRCUITS*** which have considered the matter."

"should not be construed to make it a trap for the unwary nor should it require every claimant to retain counsel experienced in the technicalities of age discrimination litigation."

"Plaintiff's Attorney, who effectively stood in Plaintiff's shoes after being retained was the antithesis of diligence. Furthermore, there is NO EXCUSE for the ignorance of the notice requirement. "

"We find ourselves in a situation where a Plaintiff with a plausible claim may not be able to fully litigate that claim because of the SLOPPY, INEPT PRACTICE OF HIS ATTORNEY". The additional equitable consideration we find applicable in this case is whether the errors of Plaintiff's counsel are of the type that should require us to visit the consequences of those errors UPON THE CLIENT."

"While we in no way condone or encourage this type of practice, we do not feel that it should interfere with plaintiff's prosecution of his claim" and the additional factor of attorney error, we find the scales to be tipped in favor of equitable TOLLING IN THIS CASE." "if attorney had proceeded in an intelligent and reasonable manner, then the outcome might have been different. But in this case the attorney's error was the product of ineptness and sloppiness and we do not think his client should have to suffer because of it. "WHERE FAILURE TO FILE WAS DUE TO ATTORNEY ERROR, SCALES TIPPED IN FAVOR OF EQUITABLE TOLLING.

ORDERED ACCORDINGLY

OATH OF ADMISSION TO THE BAR BY LAWYERS

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

- "I do solemnly swear:
- "I will support the Constitution of the United States and the Constitution of the State (where licensed).
- "I will maintain the respect due to courts of justice and judicial officers;
- "I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor in defense except as I believe to be honestly debatable under the law of the land;
- "I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice of false statement or fact of law;
- "I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice of false statement of fact or law.
- "I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;
- "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or DELAY anyone's cause for LUCRE or malice. So help me God."

This oath taken by all Justices and Lawyers of the judicial system was very eye opening to this lay person and citizen of the United States. This petitioner has been denied entrance into the Halls of Justice by an attorney who sold his rights to the above for $125, lied to his client and falsified an invoice to mislead the client(petitioner)to believe the complaint had been filed in a timely

manner. For the actions of the attorney, the petitioner must accept the blame and suffer the punishment. WHERE IS JUSTICE?

Defendant's statements in the Brief to the U.S. District Court of New Hampshire and the U.S. Court of Appeals for the First Circuit (19-1645) consistently state that the Client has been denied his day in Court and "Harsh" punishment due to Attorney's Incompetence, Gross Negligence and Dereliction of his sworn duty as an Officer of the Court.

Brief of Appellee - Paul M. Gagnon, U.S.Attorney

T. David Plourde, Ast. U.S. Attorney to the U.S. Court of Appeals for the First Circuit

"Admittedly, some courts have equitably tolled filing deadlines in similar circumstances reasoning that a plaintiff should not suffer for the "sloppy inept practice of his attorney. Volk v. Multi-media, inc. 516 F. Supp. 157, 162 (S.D. Ohio 1981). "However, this court has consistently maintained a "narrow view" of equitable tolling exceptions', Mack v Great Atlantic and Pacific Tea Company, In.' 871 F. 2d 179 (1989), and has declined to equitably toll deadlines even when they were missed because of Attorney's negligence and completely unrelated to any conduct on the part of the plaintiff. See Lopez v Citibank, n.a., 808 f.2d 905 *(1ST CIRCUIT 1987)*equitable tolling denied to plaintiff represented by counsel because, despite PLAINTIFFS MENTAL INCAPACITY, his counsel knew or SHOULD HAVE KNOWN, ABOUT THE STATUTE OF LIMITATIONS: Cano v U.S Postal Service, 755 2d 221,111 (1ST CIRCUIT 1985).

"Specifically, the SUPREME COURT stated that the "principles of tolling...do not extend to what is at best a "garden variety" claim of excusable neglect" and should be applied sparingly. Id. at 94; see Wilson v. United States Government 23 F 3d at 559.

WHAT ARE THE PARAMETERS OF "SPARINGLY", "NARROW VIEW", "GARDEN VARIETY" AND "EXCUSABLE NEGLECT"

THE U.S. COURT OF APPEALS OF THE ***FIRST CIRCUIT*** CONSISTENTLY DENIES CITIZENS OF THEIR RIGHTS ACCORDING TO THE BILL OF RIGHTS (AMENDMENT VII AND VIII). "admittedly, dismissal of Plaintiff" s cause of action and DENYING HIM HIS DAY IN COURT, may seem "HARSH".

THIS STATEMENT BY THE U.S. ATTORNEY IS A STRICT VIOLATION OF AMENDMENT VII

"THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED

and AMENDMENT VIII "NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED"

The U.S. Attorney clearly and irrevocably makes this statement in his belief that the punishment and penalty are "harsh" and in "denying him his day in court".

THEREFORE THIS CASE SHOULD BE UNQUESTIONABLE RETURNED TO THE PROPER COURT FOR PROPER RESOLUTION OF THE ISSUES BY A JURY OF THE PETITIONER'S PEERS ACCORDING TO THE CONSTITUTION OF THE UNITED STATES

According to the reasoning of the U.S. Attorney's office, U.S. District Court of N.H., and the U.S. Court of Appeals for the First Circuit the client is responsible for the acts and omissions of a Licensed Professional:

1. Surgeon's removal of the patients wrong arm or leg?
2. Registered Nurse administering wrong medication?
3. Registered Pharmacist dispensing a fatal dose of Medication.
4. A Certified Public Accountant falsifying accounts
5. ad infinitum.

Professional's are licensed for their expertise and knowledge. Why are Lawyers given preferential treatment? BECAUSE THEY ARE JUDGED BY FELLOW LAWYERS?

Which is the more despicable crime, a thief who steals at the point of a gun or a lawyer who steals money (Escrow Account of $125 or 3 Million entrusted to the lawyers care) for his own personal use and denies the client the right to a Trial by Jury of his Peers, and his constitutional rights?

The client was perfectly capable of putting the complaint into an envelope and mailing to the U.S. District Court or hand carrying to the court as the Plaintiff did when the U.S. District Court received the complaint filed by the plaintiff after Counsel stated he would make sure it was DELIVERED and DID NOT DO SO.

The Plaintiff believes Amendment VII and VIII of the bill of rights protects the citizenry from the dictatorial power of the sovereign government which also includes the judiciary.

The Plaintiff requested the U.S. Court of Appeals for the First District to Rule whether the VII and VIII Amendments of the Bill of Rights were violated and to remand the case back to the U.S. District Court for a decision according to the merits of the case. The U.S. Court of appeals ignored this question. How many citizens of the United States have been denied their right to a Trial by Jury due to the INCOMPETENCE AND GROSS NEGLIGENCE OF AN ATTORNEY IGNORING HIS SWORN DUTY AS AN OFFICER OF THE COURT.

Three or more U.S. Courts of Appeals faced the issue squarely and returned the cases where the Plaintiff's Counsel was GUILTY of INCOMPETENCE and GROSS NEGLIGENCE to the U.S. District Court where a decision would be made on the merits of the case, while the U.S. Court of Appeals for the First Circuit by passed the issue to Clear Congested Dockets, but Justice definitely is not served.

Which is of more importance to the Courts, the protection of a fellow barrister or the protection of the Citizens of the United States. In this case the Petitioner, trying to protect his honesty, integrity, and reputation of forty-three (43) years as a Professional

Pharmacist, which was the reason Congress enacted the AGE IN DISCRIMINATION ACT

Why do not the Courts question what the desperate need of an attorney was that would warrant the need of $125 at the loss of:

a) Fraternal Respect.
b) Potential Loss of License to Practice Law.
c) Moral Values
d) Respect of Family and Mental Stress to same.
e) Loss of Income
f) and Waste of Years of Training.
g) Self Respect
h) Degradation of his profession.

Why was not a deposition requested from this Attorney by the Courts? Why is the filing of a Malpractice Suit (Attorney's only would gain financially) a viable alternative and resolve the issue as to whether or Not the Petitioner was denied a promotion because of AGE DISCRIMINATION?

The Petitioner will now present an argument by a more eminently qualified person in the Judicial field. This is an opinion by MR. JUSTICE BLACK with MR. JUSTICE DOUGLAS and MR. CHIEF JUSTICE WARREN CONCURRING ...*Link v Wabash R. Co. U.S 626 p 1392, 1395,1396,1397, 1398 and 1399.*

A district court does not lack disciplinary authority over an attorney and there is no JUSTIFICATION, MORAL or LEGAL, for its punishment of an innocent litigant for the PERSONAL CONDUCT OF HIS COUNSEL. Because it was neither necessary or proper to VISIT THE SINS OF THE LAWYER UPON HIS CLIENT.

it seems to me to be contrary to the most fundamental ideas of fairness and justice to impose the punishment for the lawyer's failure to prosecute upon the plaintiff who so far as this record shows was SIMPLY TRUSTING HIS LAWYER TO

TAKE CARE OF HIS CASE as clients generally do. The Court dismisses this whole question of punishing the plaintiff Link (PERKINS) for the alleged fault of his lawyer with the simple generalized statement: "Petitioner voluntarily chose this attorney as representative in the action, and he can not now avoid the consequences of the acts or omissions of this freely selected agent."

"One may readily accept the statement that there are circumstances under which a client is responsible for the acts or omissions of his attorney. BUT IT STRETCHES THIS GENERALIZED STATEMENT TO FAR TO SAY THAT HE MUST ALWAYS DO THAT. THIS IS A GOOD ILLUSTRATION OF THE DEPLORABLE KIND OF INJUSTICE THAT CAN COME FROM THE ACCEPTANCE OF ANY SUCH MECHANICAL RULE. The plaintiff's cause of action is valuable property, within the generally accepted sense of that word, and, as such, it is ENTITLED TO THE PROTECTIONS OF THE CONSTITUTION. Due process requires that property shall not be taken away without notice and hearings. I do not see how the result here can be Moreover, to say that the SINS or FAULTS or DELINQUENCIES of a lawyer must always be visited upon his client so as to impose tremendous financial (AND MENTAL) penalties upon him, as here, is to ignore the practicalities and realities of the lawyer-client relationship. (Footnote:) I am not quite able to understand the Court's suggestion that keeping this suit alive would be visiting the sins of plaintiff's lawyer upon the defendant. I do not see how it can be regarded as a punishment to compel a person to try his lawsuit on its MERITS BEFORE AN IMPARTIAL JUDICIAL TRIBUNAL established under and operating in accordance with the CONSTITUTION OF THE UNITED STATE'S.

LAWYERS EVERYWHERE ARE GRANTED LICENSES PRESUMABLY BECAUSE OF THEIR SKILL, THEIR INTEGRITY, THEIR LEARNING IN THE LAW AND THEIR DEPENDABILITY

While there may be some clients sophisticated enough in the affairs of the world to be able to select the good from the BAD among this mass of lawyers throughout the country, this unfortunately cannot always be the case. The average individual called upon, perhaps for the first time in his life , to select a lawyer to try a lawsuit may happen to choose one of the WORST."

"He has a right to rely at least to some extent upon the fact that A LAWYER HAS A LICENSE. From this he is also entitled to believe that the lawyer has the ABILITY TO LOOK OUT FOR HIS CASE and that he should leave the lawyer free from constraint in doing so. Surely it cannot be said that there was a duty resting upon Link (PERKINS) , a layman plaintiff to try to supervise the daily professional services of the lawyer he had chosen to represent him. How could he know, even assuming that it is true, that his lawyer was a careless man or that he would have an adverse effect upon the trial judge by failing (TO FILE A COMPLAINT AS REQUIRED) to appear when ordered? How could he know or why should he be presumed to know that the many steps a lawyer needs to taken to bring his case to trial had been taken by his lawyer? Why should a client be awakened to his lawyers' incapacity for the first time by a sudden brutal pronouncement of the court YOUR LAWYER HAS FAILED TO PERFORM HIS DUTY IN PROSECUTION OF YOUR CASE AND WE ARE THEREFORE THROWING YOU OUT ON YOUR HEELS? So far as this record shows, the plaintiff never received one iota of information, character or type that should have put him on notice as an ordinary layman that his lawyer was not doing his duty. "Any general rule that clients must ALWAYS SUFFER FOR THE MISTAKES OF THEIR LAWYERS SIMPLY IGNORES ALL THESE PROBLEMS. If a general rule is to be adopted, I think it would be far better in the interest of the ADMINISTRATION OF JUSTICE, and far more realistic in the light of what the relationship between a lawyer and his client actually is to ADOPT THE RULE THAT NO CLIENT IS EVER TO BE PENALIZED, AS THIS CLIENT (PERKINS),

because of the CONDUCT of his LAWYER UNLESS NOTICE IS GIVEN TO THE CLIENT HIMSELF that such a threat hangs over his head. SUCH A RULE WOULD DO NOTHING MORE THAN INCORPORATE BASIC CONSTITUTIONAL REQUIREMENT OF FAIRNESS INTO THE ADMINISTRATION OF JUSTICE IN THIS COUNTRY.

When we allow the desire to REDUCE COURT CONGESTION to justify the sacrifice of substantial rights of the litigants in cases like this, we attempt to promote speed in administration, which is desirable, at the expense of Justice, WHICH IS INDISPENSABLE TO ANY COURT SYSTEM WORTHY OF ITS NAME. Moreover, it seems plain to me that any attempt to cut down on COURT CONGESTION BY DISMISSING MERITORIOUS LAWSUITS IS DOOMED TO FAIL even in its misguided purpose of promoting speed in Judicial Administration. It is true that by its ruling today the Court finally puts an end to this case and thus clears it from all Federal dockets. But in view of the fact that the MERITS OF THE CASE have never been reached, I cannot believe that there should be to much REJOICING at this fact .The end result of the procedures adopted here has been that much time has been wasted and yet NO JUSTICE HAS BEEN DONE. I FIND IT HIGHLY REGRETTABLE THAT THE COURT feels compelled to place its stamp of approval upon such procedures. It may not be of much importance to anyone other than the plaintiff (PERKINS) here and his family whether this case is tried on its merits or not. To my mind, however, it is of VERY GREAT IMPORTANCE TO EVERY ONE IN THIS COUNTRY THAT WE DO NOT ESTABLISH THE PRACTICE OF THROWING LITIGANTS OUT OF COURT WITHOUT NOTICE TO THEM SOLELY BECAUSE THEY ARE CREDULOUS ENOUGH TO ENTRUST THEIR CASES TO LAWYERS WHOSE NAMES ARE ACCREDITED AS WORTHY AND CAPABLE BY THEIR GOVERNMENT.

I FEAR THAT THIS CASE IS NOT LIKELY TO STAND OUT IN THE FUTURE AS THE BEST EXAMPLE OF AMERICAN JUSTICE

This is the opinion of a CHIEF JUSTICE AND TWO (2) ASSOCIATE JUSTICES OF THE SUPREME COURT WHICH IS SIMPLY STATED IN CLEAR, CONCISE and SIMPLE LANGUAGE , which is the same language used by the Circuit Courts which remanded the cases back to the District Courts to be tried on the Merits of the case. Compare these Statements with the Statement of the U.S. Court of Appeals of the FIRST CIRCUIT about the "Siren Call is overborne by the nature of the adversary system." Ridiculous!!!

A confidence man engages in "Double Talk" and "Gibberish" where as the true Professional speaks in Clear, Concise and Simple terms so that the lay person is clearly aware of the meaning which the professional wishes to convey.

TO SUMMARIZE THE ABOVE:

The Supreme Court should subpoena the Petitioners Ex-Counsel for a deposition as to why the funds left in ESCROW for the filing fee were not used for this purpose as requested by the Petitioner.

Request that all records from the District Court and the Court of appeals be forward to this court for review.

That the U.S. Attorney be requested to state the difference between "HARSH" , and CRUEL and 'UNUSUAL PUNISHMENT".

An explanation by the U.S. Attorney and the U.S. Judicial System what is the difference between "DENYING HIM HIS DAY IN COURT" and "THE RIGHT TO TRIAL BY JURY SHALL BE PRESERVED."

The decision by the U.S. Court of Appeals for the **FIRSTS CIRCUIT** is VAGUE and UNCLEAR, whereas the decision for the **FIFTH CIRCUIT, SIXTH CIRCUIT, SEVENTH CIRCUIT,** U.S. District Court, S.D. Ohio, and the opinion of **MR. JUSTICE DOUGLAS, MR. JUSTICE BLACK AND MR. CHIEF JUST WARREN** are very clear and concise.

1. Counsel's partner in the law firm of Marshall Law states, if the complaint was not filed, the Plaintiff should not be held accountable for the negligence of his counsel at the time.

2 5ths Circuit of Appeals states: "The Plaintiff is blameless.

3. 6th Circuit of Appeals states: "Where failure to file was due to Attorney error, scales tipped in favor of equitable tolling." "So ordered.'

4. 7th Circuit of Appeals states. "Dismissal is usually inappropriate where the neglect is solely the fault of the Attorney."

5 a) 6th Circuit of Appeals states: "The 6th Circuit put itself in step with OTHER CIRCUITS which have considered the matter.

b) lst Circuit and the U.S. District Court of N.H.. concurring in the more narrow view of the doctrine recently articulated by the Supreme Courts and other Courts sitting in this and OTHER CIRCUITS..

c) Which statement is correct? The one that is for Justice or the one for the protection of the members of the Judiciary System.

6. The statements by the former Chief of Staff at the Veterans Administration Center, Castle Point, New York proves this is definitely NOT a "frivolous" or "Garden Type" case as stated by the U.S. District Court of N.H. and affirmed by the lst court of Appeals. (Appendix J).

This decision and it is just that a decision by the U.S. Court of Appeals of the First Circuit brought down an Iron Curtain blocking this Petitioner's right to Justice.

Let the Decision by the Supreme Court settle this question once and for all and raise the Iron Curtain and let the Rays of Justice shine forth in the Halls of Justice.

JUSTICE IS NOT BEING SERVED ACCORDING TO THE CONSTITUTION AND THE BILL OF RIGHTS. Amendment VII and Amendment VII.

CONCLUSION

Let this Court set a precedent and make a decision and statement that the "Sins , Faults or delinquencies of a lawyer shall NOT be visited upon the client.".

That a Citizens claim can not be thrown out of Court unless the Citizen Personally is notified.

For the fore going reasons, this Court should grant the Petitioners request and should issue a writ of certiorari to the U.S. Court of Appeals for the First Circuit and remand the case back to the U.S. District Court of new Hampshire so that this case may be RESOLVED ON ITS MERITS BY A JURY OF HIS PEERS.

Respectfully,

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